

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **NORTHERN DISTRICT OF CALIFORNIA**  
8

9  
10 **THAN ZAW, INDIVIDUALLY**  
11 **AND ON BEHALF OF ALL**  
12 **OTHERS SIMILARLY**  
13 **SITUATED,**

14 Plaintiff,

15 v.

16 **NELNET BUSINESS**  
17 **SOLUTIONS INC.; NELNET,**  
18 **INC.; and NELNET**  
19 **SERVICING, LLC; and DOES 1-**  
20 **100,**

21 Defendant.

22 **Case No.: C 13-05788 RS**

23 **AMENDED FINAL ORDER**  
24 **APPROVING CLASS ACTION**  
25 **SETTLEMENT**

26 **DATE: November 13, 2014**  
27 **TIME: 1:30 p.m.**  
28 **COURTROOM: 3**

29 **HON. RICHARD SEEBORG**

30  
31 **AMENDED FINAL APPROVAL ORDER**

32 On October 16, 2013, after active litigation, extensive arms length  
33 negotiations, mediation sessions before the Honorable Edward A. Infante (Ret.),  
34 and settlement discussions, Plaintiff and Defendant (herein jointly referred to as  
35 the “Parties”) entered in to a Class Action Settlement Agreement (hereinafter  
36 referred to as the “Agreement”), which is subject to review under Fed. R. Civ. P.  
37 23. On June 6, 2014, the Parties filed the Agreement, along with Plaintiff’s Joint  
38 Motion for Preliminary Approval of Class Action Settlement Agreement  
39 (hereinafter referred to as the “Preliminary Approval Motion”).

40 In compliance with the Class Action Fairness Act of 2005, Pub. L. No. 109-

1 2, 119 Stat. 4, Defendant will serve written notice of the proposed class action  
2 settlement on the person who has the primary Federal regulatory or supervisory  
3 responsibility with respect to Defendant.

4 On August 4, 2014, upon consideration of the Agreement, Preliminary  
5 Approval Motion, and the record, the Court entered an Order of Preliminary  
6 Approval of Class Action Settlement (hereinafter referred to as the "Preliminary  
7 Approval Order"). Pursuant to the Preliminary Approval Order, the Court, among  
8 other things, (i) preliminarily certified (for settlement purposes only) a class of  
9 plaintiffs (hereinafter referred to as the "Class Members") with respect to the  
10 claims asserted in this action; (ii) preliminarily approved the proposed settlement;  
11 (iv) appointed Plaintiff Than Zaw as the Class Representative; (v) appointed Hyde  
12 & Swigart and Kazerouni Law Group, APC as Class Counsel; and (vi) set the date  
13 and time of the Final Approval Hearing.

14 On October 3, 2014, Class Counsel timely filed their motion for Attorneys'  
15 Fees, costs, and incentive award.

16 On October 14, 2014, the Parties filed their Motion for Final Approval of  
17 Class Action Settlement Agreement (hereinafter referred to as the "Final Approval  
18 Motion"). Pursuant to their Final Approval Motion, the Parties request final  
19 certification of the settlement class under Fed. R. Civ. P. 23(b)(3) and final  
20 approval of the proposed class action settlement.

21 On November 13, 2014, a Final Approval Hearing was held pursuant to Fed.  
22 R. Civ. P. 23 to determine whether the lawsuit satisfies the applicable prerequisites  
23 for class action treatment and whether the proposed settlement is fundamentally  
24 fair, reasonable, adequate, and in the best interests of the Class Members and  
25 should be approved by the Court. The Court has read and considered the  
26 Agreement, Final Approval Motion and the record. All capitalized terms used  
27 herein have the meanings defined herein and/or in the Agreement.

28

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. **JURISDICTION:** The Court has jurisdiction over the subject matter of the Action and over all settling parties hereto.
2. **SETTLEMENT CLASS MEMBERS:** Pursuant to Fed. R.Civ. P. 23(b)(3), the Action is hereby finally certified, for settlement purposes only, as a class action on behalf of the following Settlement Class members with respect to the claims asserted in the Action:

All persons within the State of California, who, on or after December 18, 2011 through August 4, 2014, received a telephone call from Defendant that was recorded and/or monitored by Defendant.

3. **CLASS REPRESENTATIVE AND CLASS COUNSEL APPOINTMENT**  
Pursuant to Fed. R. Civ. P. 23, the Court finally certifies Plaintiff Than Zaw as the Class Representative and Joshua B. Swigart of Hyde & Swigart and Abbas Kazerounian of the Kazerouni Law Group, APC as Class Counsel.
4. **NOTICE AND CLAIMS PROCESS:** Pursuant to the Court's Preliminary Approval Order, the Claims Administrator has complied with the approved notice process as confirmed in its declaration filed with the Court. The form and method for notifying the Settlement Class members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process, and constituted the best notice practicable under the circumstances. The Court finds that the notice process was clearly designed to advise the Settlement Class members of their rights. Further, the Court finds that the claim process set forth in the Agreement was followed and that the process was the best practicable procedure under the circumstances.

1 5. **FINAL CLASS CERTIFICATION:** The Court again finds that the Action  
2 satisfies the applicable prerequisites for class action treatment under Fed. R.  
3 Civ. P. 23, namely:

4 (a) The Settlement Class members are so numerous that joinder of all of  
5 them in the Action would be impracticable;  
6 (b) There are questions of law and fact common to the Settlement Class  
7 members, which predominate over any individual questions;  
8 (c) The claims of Plaintiff are typical of the claims of the Settlement Class  
9 members;  
10 (d) The Plaintiff and Class Counsel have fairly and adequately represented  
11 and protected the interests of all the Settlement Class members; and  
12 (e) Class treatment of these claims will be efficient and manageable, thereby  
13 achieving an appreciable measure of judicial economy, and a class action  
14 is superior to other available methods for a fair and efficient adjudication  
15 of this controversy.

16 6. The Court finds that the settlement of the Action, on the terms and conditions  
17 set forth in the Agreement, is in all respects fundamentally fair, reasonable,  
18 adequate, and in the best interests of the Settlement Class members,  
19 especially in light of the benefits to the Settlement Class members, the  
20 strength of the Plaintiff's case, the complexity, expense and probable  
21 duration of further litigation, the risk and delay inherent in possible appeals,  
22 and the risk of collecting any judgment obtained on behalf of the class.

23 7. **SETTLEMENT TERMS:** The Agreement, which has been filed with the  
24 Court and shall be deemed incorporated herein, and the proposed settlement  
25 are finally approved and shall be consummated in accordance with the terms  
26 and provisions thereof, except as amended by any order issued by this Court.  
27 The material terms of the Agreement include, but are not limited to, the  
28 following:

- 1 a) Defendant will pay a non-reversionary "all in" cash sum in the  
2 total amount of \$1,188,110.00.
- 3 b) The 1,907 Class Members who submitted a valid claim form will  
4 each receive \$417.97 from the Settlement Fund.
- 5 c) Claims Administrator shall pay from the Settlement Fund the  
6 maximum total of \$1,500.00 to Plaintiff, Than Zaw in the *Zaw*  
7 Action payable through Class Counsel as an Incentive Payment for  
8 bringing and participating in this action; and
- 9 d) Claims Administrator shall pay from the Settlement Fund to Class  
10 Counsel the maximum sum of \$297,027.00 as attorneys' fees and  
11 \$15,000 in costs incurred in litigating this Action, in the manner  
12 specified in the Settlement Agreement.

13 8. The Court finds that the settlement of the Action, on the terms and conditions  
14 set forth in the Agreement, is in all respects fundamentally fair, reasonable,  
15 adequate, and in the best interests of the Settlement Class members,  
16 especially in light of the benefits to the Settlement Class members, the  
17 strength of the Plaintiff's case, the complexity, expense and probable  
18 duration of further litigation, the risk and delay inherent in possible appeals,  
19 and the risk of collecting any judgment obtained on behalf of the class.

20 9. **EXCLUSIONS:** Only two exclusions were received. The persons requesting  
21 exclusion are named on Exhibit A to this Order. The Court hereby excludes  
22 these individuals from the Settlement Class.

23 10. **OBJECTIONS:** Objector Noel Lawrence's objection is hereby dismissed  
24 pursuant to the Parties' Stipulation. [See ECF No. 29].

25 11. The Court finds that the settlement of the Action, on the terms and conditions  
26 set forth in the Agreement, is in all respects fundamentally fair, reasonable,  
27 adequate, and in the best interests of the Settlement Class members,  
28 especially in light of the benefits to the Settlement Class members, the

1 strength of the Plaintiffs' case, the complexity, expense and probable  
2 duration of further litigation, the risk and delay inherent in possible appeals,  
3 and the risk of collecting any judgment obtained on behalf of the class.

4 12. The Settlement Class members were given an opportunity to object to the  
5 settlement. No Settlement Class members filed objections. After  
6 consideration of each of the objections, the Court hereby overrules such  
7 objections.

8 13. This Order is binding on all Settlement Class members, except those  
9 individuals named on Exhibit A, who validly and timely excluded themselves  
10 from the Class.

11 14. RELEASE OF CLAIMS AND DISMISSAL OF ACTION: The Class  
12 Representative, Settlement Class members, and their successors and assigns  
13 are permanently barred and enjoined from instituting or prosecuting, either  
14 individually or as a class, or in any other capacity, any of the Released  
15 Claims against any of the Released Parties, as set forth in the Agreement.  
16 Pursuant to the release contained in the Agreement, the Released Claims are  
17 compromised, discharged, and dismissed with prejudice by virtue of these  
18 proceedings and this Order.

19 15. The Action is hereby dismissed with prejudice in all respects.

20 16. This Order is not, and shall not be construed as, an admission by Defendant.

21     ///

22     ///

23     ///

24     ///

25     ///

26     ///

27     ///

28     ///

1 17. Without affecting the finality of this Final Judgment and Order of Dismissal  
2 with Prejudice, the Court hereby retains continuing and exclusive jurisdiction  
3 over the Parties and all matters relating to the Action and/or Agreement,  
4 including the administration, interpretation, construction, effectuation,  
5 enforcement, and consummation of the settlement and this order.

6  
7  
**IT IS SO ORDERED.**

8  
9  
10 Dated: 12/1/14



11  
12 HON. RICHARD SEEBORG  
13 UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28